IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO.

FRED J. GRAHAM, Petitioner,

v.

JAMES P. HOULIHAN, SALVATORE RUBINO, ERNEST BOOTH, JR., DONALD CASSIN, AND JAMES F. McKENNA, THE CITY OF TORRINGTON, THE REDEVELOPMENT AGENCY, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement	5
Reasons for granting the writ	10
Conclusion	1a
Appendix A—Opinion below	10a
Appendix B—Statutes	

CITATIONS

CASES:	
Berman v. *Parker*, 348 U.S. 26 (1954)	6
Interstate Commerce Comm. v. *Louisville & N.R. Co.*, 227 U.S. 88 (1913)	7
Morgan v. *United States*, 298 U.S. 468 (1936)	7, 8
Morgan v. *United States*, 304 U.S. 1, 18 (1937)	7
Norwegian Nitrogen Co. v. *United States*, 288 U.S. 294 (1933)	7
Ohio Bell Tel. Co. v. *Comm'n.*, 301 U.S. 292 (1937)	6, 7
Wilson v. *Long Branch*, 27 N.J. 360, 142 A.2d 837 (1958)	5

(over)

INDEX

Page

STATUTES:

28 U.S.C. 1257(3) 2

Connecticut Redevelopment Legislation
Conn. Gen. Stat. (Rev. 1949, Supp. 1955) § 484d ... 3, 7

Conn. Gen. Stat. (Rev. 1958) § 8-127 ..... 3, 7

N. Y., McK. Unconsol. §§ 3320, 3415 6

N. J., N.J.S.A. 40:55-21.4 6

MISCELLANEOUS:

1 Davis, Admin. Law § 7.01 (1959) 8

Housing and Home Finance Agency, Urban Renewal Admin., *Urban Renewal Project Directory*, December 31, 1958 6

Conn. Development Comm., *Status of Urban Renewal Projects in the State of Connecticut*, June 30, 1960 6

72 Harv. L. Rev. 504 (1959) 5

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Petitioner, Fred J. Graham prays that a writ of certiorari issue to review the judgment of the Supreme Court of Errors of the State of Connecticut entered in the above case on May 10, 1960.

OPINIONS BELOW

The opinion of the trial court, the Superior Court for Litchfield County in Connecticut, (R.21) is unreported. The opinion of the Supreme Court of Errors of the State of Connecticut (App. A, pp. 1a-9a) is reported officially in 147 Conn. 321 (1960) and unofficially in 160 A.2d 745 (1960).

JURISDICTION

The judgment of the Supreme Court of Errors of Connec-

ticut was entered May 10, 1960, and announced May 17, 1960 (App. A., p. 1a). The jurisdiction of this court is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

After preparing a redevelopment plan, the respondent agency, in an attempt to comply with the statutory requirement for a public hearing (App. B, p. 10a) held a meeting at which persons interested in expressing opinions concerning the adoption of the proposed plan by the agency were heard. (Finding, Par. 25, R., p. 42). No presentation was made by any of the respondents. Nor were the standards adopted by the agency as the basis for its conclusion that the area was a redevelopment area disclosed or identified at the hearing, in the printed plan, or in the declaration of findings issued after the so-called public hearing. (Finding, Par. 32, R., p. 48). Nevertheless, the trial court concluded that the hearing was not invalid. The Supreme Court of Errors of Connecticut affirmed. Upon the foregoing facts, one question is presented:

In view of the unusual policy considerations involved in redevelopment, was the petitioner denied due process of law by the statutorily required hearing at which he was permitted to appear and oppose but at which there was no presentation to which he could answer or respond.

STATUTES INVOLVED

The pertinent provisions of Connecticut redevelopment legislation are set forth in Appendix B, at pages 9a to 10a.

STATEMENT

The petitioner commenced a declaratory judgment action in the state courts of Connecticut, February 5, 1958, seeking in part a determination as to whether or not his constitutional rights to due process of law under the Fourteenth Amendment to the Constitution of the United States had been violated by the public hearing as held. The basic facts are these: The petitioner is a property owner and resident in the pro-

ject area. The respondents are the City of Torrington, its redevelopment agency and the individual members of the latter. The duly established agency designated the project area as the area proposed for redevelopment and engaged a professional consulting firm to survey the area and report its conclusions. The firm's conclusions are contained in the preliminary and final project reports. The final project report was designated the redevelopment plan.

In an effort to comply with state statutes which required a public hearing on the redevelopment plan before agency approval of it and which also conditioned approval, after the hearing, upon a finding that the project area was in fact a "redevelopment area," the agency held a hearing in 1957. Conn. Gen. Stat. (Rev. 1958) § 8-127 (Rev. 1949, Supp. 1955) § 484d; App. B., pp. 9a-10a. The executive secretary of the agency presented the redevelopment plan (the final project report with fifteen accompanying maps) at the hearing, recited its chapter headings and read the boundary description of the entire area. The Mayor of Torrington and a number of other persons spoke in favor of the redevelopment plan and dwelt at length upon the ultimate benefits to be derived from the proposed shopping center to be built on the redevelopment site after clearance of existing structures. No speaker who rose in favor of the plan discussed the qualification of the area for redevelopment. The petitioner was not represented by counsel but his step-son and others spoke in opposition to the plan. All those who wished to express opposition to the plan were permitted to do so. However, inasmuch as no data, documentation, conclusions, statistics, or survey results concerning the qualification of the area in fact as a "redevelopment area" was presented by the agency, its staff, its consultants or other public officials, and such material was not contained in the redevelopment plan, the petitioner and the public as well were denied the opportunity to know and to meet the position of the respondents as required by the traditional safeguards of due process of law.

The issue of the constitutionality of the hearing was raised at the outset of this litigation. In his complaint, the petitioner specifically claimed the protection of the Fourteenth Amendment both when he alleged that he was denied due process by the hearing as held [1] and when he sought a determination as to whether or not the hearing as held violated the due process clause of the Fourteenth Amendment [2]. The transcript of the hearing was included in the respondents' answer as a part of the agency record (R., p. 16, Par. 19 Exh. H)

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[1] Par. 10 of the Complaint (R.3) is as follows:

The public hearing held on the aforesaid date was invalid and illegal and in violation of the "due process" clause of the Fourteenth Amendment to the Constitution of the United States and Section 9 of the Constitution of the State of Connecticut in that proper notice of the criteria and factual allegations upon which the agency intended to act was not given to the plaintiff's opponents of the redevelopment plan or the public generally prior to the aforesaid hearing and opponents and the public generally were consequently not given an adequate opportunity to be heard and protect their legal interests with regard to the factual inquiry precedent to making of the factual finding that the said area was a "redevelopment area" within the meaning of Chapter 55 of the General Statutes; nor was any presentation made by the agency at any public hearing to explain the details of either the preliminary or the final project report pertaining to the redevelopment plan, or to inform the public of the basis of such plans and the criteria used; nor was the public ever given an opportunity to question the planners or review with the agency and the planners the redevelopment plan.

[2] The prayer of the complaint (R.7-8) is as follows:

1. A declaratory judgment determining whether said plan is invalid and/or unconstitutional insofar as it affects said property of the Plaintiff because of the facts that: . . .

B. The hearing held by the agency on or about October 10, 1957, was in violation of the "due process" clause of the Fourteenth Amendment to the Constitution of the United States;

3. A declaratory judgment determining whether or not the plan, for the reasons set forth in this writ, violates the due process clause of the Fourteenth Amendment to the United States Constitution; or Article 1, Section 9 of the Constitution of Connecticut which forbids the taking of property without due course of law; or Article 1, Section 11 of the Constitution of Connecticut which requires that private property not be taken unless for a public use.

and was introduced into evidence by both parties. The trial court found that the hearing was held "for the purpose of hearing persons interested in expressing opinions concerning the adoption of the proposed plan by the agency" (Finding, Par. 25, R., p. 42) and ruled that the petitioner was accorded a full opportunity to be heard at the public hearing and that the hearing was legal. (Finding, Pars. 74-75, R., p. 46; Mem. of Decis., R., p. 25). The petitioner preserved his right to appeal on these issues in the claims of law (Finding, Par. 85, R., p. 50) and Assignment of Errors (Par. 14 (d), R., p. 52).

The court below, in affirming the trial court's decision, passed briefly upon the petitioners' claimed constitutional right, stating: "The due process clause of the Fourteenth Amendment to the federal constitution . . . does not guarantee any particular form of state procedure: . . . The plaintiff was afforded a full opportunity to appear and oppose, and to offer any evidence he had. . . . There is no merit to his claim of denial of due process." (App. A, pp. 7a-8a).

REASONS FOR GRANTING THE WRIT

1. The nature of procedural due process to which a property owner is entitled in a redevelopment program has not yet been considered by this court. Nor have the state courts in their multitude of decisions relating to redevelopment generally shed any light on the problem. Where the question has been raised, the courts have summarily disposed of it with the conclusion that the decision of an agency in choosing an area for redevelopment is legislative in character and thus final. *Wilson* v. *Long Branch*, 27 N.J. 360, 142 A.2d 837 (1958). Or, as in the instant case, they have ruled that where a public hearing is required it merely affords objecting property owners an opportunity to be heard, that is, to express their opinions (Finding, Par. 25, R., p. 42) or, more dramatically, "to vent their hostility." 72 Harv. L. Rev. 504, 515 (1959). The instant case squarely raises the question of what is a fair hearing where as here a statute specifically

requires a public hearing on a redevelopment plan before it is approved.

Not only should the decision of the court below be reviewed because it raises an issue not yet settled by this court, but also because the issue is one of significant national importance. Most jurisdictions now have legislation enabling local communities to redevelop. Many, like Connecticut, require a public hearing as a prerequisite to redevelopment. See, N.Y. Statutes, McK. Unconsol. § 3320, § 3415; N.J. Statutes N.J.S.A. 40:55-21.4. Nor has this legislation been left idle. Indeed, at the beginning of the year 1959 there were more than six hundred redevelopment programs outstanding involving more than a billion dollars in public funds in innumerable American communities other than Connecticut. Housing and Home Fin. Agency, Urban Renewal Administration, *Urban Renewal Project Directory*, Dec. 31, 1958. In Connecticut alone there are forty-nine pending projects involving a gross cost of nearly two hundred million dollars. Conn. Development Comm., *Status of Urban Renewal Projects in the State of Connecticut*, June 30, 1960. With such extensive activity in the redevelopment field nationally, as well as in Connecticut, the question of the kind of public hearing that will satisfy due process requirements is a compelling one. As this court set the constitutional standard of broad substantive scope for redevelopment in the *Berman* case, so, it is respectfully suggested that this court should review the instant case in order to set the constitutional standard of procedural safeguards for the individual in redevelopment. See *Berman* v. *Parker*, 348 U. S. 26 (1954).

2. The court below ruled that "The plaintiff was afforded a full opportunity to appear and oppose, and to offer any evidence he had" (App. A, p. 7a). However, the hearing, as characterized, does not meet the minimal requirements assured to every citizen by the Fourteenth Amendment. *Ohio Bell Tel. Co.* v. *Comm'n.*, 301 U.S. 292, 304-5 (1937). As this court stated in the second *Morgan* case, "The right to a hearing embraces not only the right to present evidence, but also

a reasonable opportunity to know the claims of the opposing party and to meet them." *Morgan* v. *United States*, 304 U.S. 1, 18 (1937) (Finding, Par. 32, R., p. 43). In the absence of any presentation of the basis of the recommended position that the area was a redevelopment area, and in view of the unknown standards upon which the agency specifically relied (Finding, Par., 32, R., p. 43), the plaintiff's "full opportunity to appear and oppose" was merely an empty formality. *Morgan* v. *U.S.*, 298 U.S. 468 (1936); *Interstate Commerce Comm.* v. *Louisville & N.R. Co.*, 227 U.S. 88 (1913); Ohio Bell Tel. Co., *supra*.

The respondent agency was not acting in an advisory capacity to either the executive or the legislative branches. See *Norwegian Nitrogen Co.* v. *U.S.*, 288 U.S. 294 (1933). It was acting under specific statutory authority enabling it to approve the redevelopment plan on condition that it find as a fact that the area in question was a "redevelopment area." Conn. Gen. Stat. (Rev. 1958) § 8-127 (a), (Rev. 1949, Supp. 1955) § 484d (b); App. B, pp. 9a-10a. Whether the hearing was to be of the argumentative or trial type is at this juncture immaterial. Without an opportunity to know the basis of the respondents' position or any of the data relied upon by the agency, the plaintiff could neither argue nor present evidence to the issues before the hearing. The inability of the petitioner to make any significant presentation at the hearing defeated the very purpose of the hearing — to provide the agency with information bearing upon the findings it was required to make and ultimately upon the issue of whether or not the redevelopment plan should be approved. Neither the petitioner nor the public can possibly inform the agency if the standards and expert data upon which it proposes to act are withheld. If standards are adopted, they should not remain hidden; if an area is substandard and deteriorated, reasons and explanations should be given; if experts are relied upon, they should be available and should explain their findings. The issue of qualification for redevelopment should not be camouflaged in a balloon of salesmanship which never

touches ground at the public hearing. The Fourteenth Amendment may not require a uniform state procedure, but it does require a procedure for a public hearing which will effectively insure the individual's right to due process under the particular circumstances existing.

To summarily dispose of the due process question by labeling the administrative decision a legislative one, as the court below did, (App. A, p. 7a) is to indulge in legalistic evasion rather than judicial determination. Davis, 1 Administrative Law, § 7.01 (1959). The kind of hearing required should depend upon the nature of the question to be resolved and not upon the attachment of labels made for other purposes. *Morgan v. United States*, 298 U.S. 468 (1936). At this late date in the history of socio-economic governmental intervention, the urgent issue of the day in this field is not the desirability or constitutionality of such programs, but the administrative and procedural safeguards necessitated by them: not the political breadth of power, but whether the respondent agency is to be given a constitutional carte blanche in redeveloping any and all areas on any basis it chooses.

3. The basic nature of redevelopment requires a strict devotion to the concept of due process for property owners. The heart of redevelopment programs and other eminent domain projects is the power to condemn. But this power is virtually all they have in common. In the ordinary eminent domain proceeding, the purpose of the taking is to obtain a site for a public project. The particular land chosen is usually incidental to and rarely absolutely essential to the public use.

The redevelopment situation is just the reverse. The particular physical area selected is the basis, indeed the *raison d'etre* of the public use. The whole justification for the redevelopment program is to eliminate the conditions which obtain in the area. By enlarging or decreasing the area or moving it even a small amount, the necessary conditions will be changed and the statutory requirement of an adequate unit

for rebuilding may be withdrawn. The particular pieces of property destined for redevelopment and the particular uses and conditions to which that property is devoted both individually and as an area are peculiarly and uniquely related to redevelopment and its public use. As a result the landowners individually and as a group, as well as the public, have a special and unusual interest in the decision to take the property. It is not a generalized need of the public for a new institution or service which subjects their property to condemnation, but the very use they make of it.

The wide scope which the courts have properly given to redevelopment programs to permit them to respond to the varied standards and goals of diverse communities across the nation has heightened this problem. No longer is a property owner assured of maintaining his private ownership even if as here his area is not a slum (Mem. of Decis., R., p. 23), not substandard (Mem. of Decis., R., p. 25), not detrimental to the morals of the community (*Ibid.*) and not subject to juvenile delinquency, vice, crime, or welfare problems (Finding 61, R., p. 45). Under such unusual conditions the legislature's command of a public hearing is more meaningful and significant.

The petitioner contends that unless such public hearings as the one required by law here disclose the true basis for a particular program, there will be no avenue open by which to control the administrative power. The legislative delegation of power is necessarily a broad one, but it must not be further enlarged by judicial emasculation of the required public hearing, the legislature's only provision for a check upon that power. Due process demands that at the public hearing which is required to inform the administrative agency on the propriety of the contemplated program, the landowners and the public are entitled to know the basis of the proposed administrative action so that an intelligent and informative presentation of the issues on all sides can take place.

The plaintiff respectfully suggests that the vast redevelopment programs being embarked upon in the urban areas of the country are silently but decisively bringing about a change in the traditional patterns of land holding in America. As redevelopment goes beyond the slum and the substandard, as it does in this case, the small private owner in the central and necessarily desirable land locations of the cities is giving way to the single, large, national owner. No instance has come to the petitioner's attention in which the local property owners obtained control of the land after redevelopment. While we are not suggesting that the courts should limit redevelopment for this reason, we respectfully submit that the changes which redevelopment produces and the kind of amalgamated power — legislatively, judicially and executively — that it concentrates in the respondent agency necessarily subject the decision as to the particular and kind of area to be redeveloped to unusual pressures. Such pressures can only be controlled by according the land owner, the petitioner in the instant case, the safeguards of minimal due process to which he is entitled.

These unusual conditions have the significance of removing redevelopment from the tradition by which eminent domain activities have been distinguished and withdrawn from the mainstream of administrative hearing procedure.

CONCLUSION

The questions presented by this case are of wide significance, both geographically and legally, far beyond the particular project. The serious questions of public policy involved here and the effect of the decision below, if unreversed, upon the historic right of the individual to the protections of due process of law make this case a peculiarly appropriate one for the exercise of this court's discretion in favor of review.

For the reasons given above the petitioner respectfully requests that this petition for a Writ of Certiorari be granted.

Respectfully submitted,
MILTON SOROKIN
ETHEL SILVER SOROKIN
Counsel for Petitioner.

Aug. 2, 1960

APPENDIX A

SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

No. 4878

FRED J. GRAHAM ET AL.

v.

JAMES P. HOULIHAN ET AL.

Opinion

Action for a declaratory judgment on the validity of a redevelopment plan, brought to the Superior Court in Litchfield County and tried to the court, *Alcorn, J.*; judgment determining the plan to be valid, and appeal by the named plaintiff. *No error.*

Milton Sorokin, with whom was *Ethel S. Sorokin*, for the appellant (named plaintiff).

John A. Mettling, with whom were *Robert P. Burns* and, on the brief, *John A. Speziale*, *James B. Lefebre*, *Salvatore A. DiGiorgio* and *Paul Smith*, city attorney, for the appellees (defendants).

BALDWIN, C. J. This is an action for a declaratory judgment and injunctive relief brought in February, 1958, by the named plaintiff against the city of Torrington, the redevelopment agency of that city, and the individual members of the agency. The named plaintiff is the owner of real estate located within an area designated for redevelopment. Other property owners intervened as coplaintiffs. The named plaintiff, hereinafter called the plaintiff, claims that the action of the redevelopment agency in establishing the redevelopment area is invalid and unconstitutional so far as it concerns his property, because: (1) the agency acted arbitrarily, unreasonably and illegally in finding that the area was a "redevelopment area" within the scope of chapter 55 of

the 1949 Revision, (as amended, General Statutes, c. 130); and (2) the hearing held by the agency was in violation of the due process clause of the fourteenth amendment to the federal constitution and article first, § 12, of the constitution of this state. He also assigns error in the denial of his motions for disclosure of facts and documents and in two rulings on evidence.

The facts may be stated in summary as follows: Torrington is situated in a relatively narrow valley through which the Naugatuck River flows. After the disastrous flood of August 19, 1955, the Torrington planning commission selected several sites, among them the one involved in this case, which because of the flood and other conditions were believed to be arresting the sound growth of the city. The purpose of the selection was to plan protection against future flooding; improvement of highway circulation and traffic regulation and control; provision for needed off-street parking areas; and betterment of business conditions in the city. Torrington established a redevelopment agency in October, 1955. Thereafter, the agency designated the area which includes the plaintiff's property as the one to be redeveloped. In January, 1956, the agency employed, as consultants, a firm of professional city planners to survey the area and prepare a plan for consideration by the agency. The area embraces 11.48 acres exclusive of public streets. It adjoins the central business district of the city and is bordered on the north and east by the Naugatuck River; on the south by Fuessenich Park, which includes a baseball field, a gridiron, concrete tennis courts, a playground and a field house; and on the west by Coe Memorial Park and private properties. The area is traversed by two main arteries of traffic, South Main Street and Litchfield Street. Of the 78 buildings involved, 68 are chiefly residential, containing units for 155 families, and 10 are commercial. Some are used for both residential and commercial purposes. The residences are for the most part built close together on small lots. Many of them—single and two-and three-family houses—are poorly

laid out and without central heating and adequate plumbing facilities. They are generally substandard and deteriorated. Of the structures in the area, 61.5 per cent are in need of major repairs, and 33 per cent of minor repairs. In the 1955 flood, the first floors of 70 per cent of these buildings were under water, and the buildings are vulnerable to future flooding; 61.5 per cent are substandard. Four hundred and ten persons in 145 family units live in the area; seventy-one of the families have incomes of $3999 or less. The existing street system is inadequate. The area presents a fire hazard. There have been infrequent property transfers within the neighborhood in recent years.

In May, 1956, the consultants submitted a preliminary project report which the agency caused to be published in serial form in the newspapers. This report did not show, out of deference to the owners, what buildings in the area had been classified as substandard, although this information was provided later. The agency held a number of public meetings in the city hall and in the redevelopment area. At these meetings the preliminary project report was made available; copies were also on file in the agency office in the city hall. On October 16, 1956, the report was approved by the agency, and in April, 1957, the consultants submitted a final project report. This report was published in May, 1957, and was on file in the agency's office in the city hall until October of that year. During this time, an extensive program to publicize the plan was conducted. On October 7, 1957, the voters of the city approved the expenditure of public funds to carry out the plan by a vote of more than two to one. A public hearing on the final project report was held on October 10, 1957, following due notice in the public press. Certain interested persons, including a representative of the plaintiff, appeared at these hearings and spoke in opposition to the plan. The plaintiff's representative was heard without interruption. He offered no evidence and did not examine or cross-examine any witnesses. The hearing was held open by the agency until October 15, 1957, for the reception of any fur

ther pertinent information, but the plaintiff did not, during this period, offer anything further. Following the hearing, the agency met several times in executive session, considered the preliminary and final project reports in detail, personally inspected the area, and, on October 28, 1957, unanimously concluded that it was a redevelopment area and adopted the redevelopment plan. The declaration of findings by the agency and its resolution approving the plan were made a part of the finding by the court. The city council also made a finding on October 28, 1957, that the area was a redevelopment area.

The plaintiff has asked for the incorporation in the finding of many of the paragraphs in his draft finding and for the elimination from the finding of many of the facts found. No corrections can be made which would advantage him. Practice Book § 397; Maltbie, Conn. App. Proc. §§ 156, 158.

We shall consider first the plaintiff's claim that the agency acted arbitrarily, unreasonably and illegally in finding that the area was a redevelopment area and that the trial court erred in sustaining the agency. The plaintiff argues that the main purpose of redevelopment is the "elimination of slums and blighted areas which rankle the soundness and security of urban communities." He urges that the area is not a slum, is not beyond the remedy and control of regulatory legislation, does not require the expenditure of an excessive and disproportionate amount of public funds, and is not a social and economic liability arresting the sound growth of the city. It may well be, as he claims, and as the court has in part found, that the area is not a slum, which is usually thought of as an unsightly, insanitary neighborhood of ramshackle, vacant buildings, and bad housing accommodations, a breeder of social problems that overtax the facilities of welfare agencies and police. The court found that the area was not shown to have a juvenile delinquency, vice, crime or welfare problem which called for a disproportionate expenditure of public funds for police and fire protection or welfare services.

The declaration of public policy in the statute is, however, a broad one. Nov. 1955 Sup., § N30 (as amended, General Statutes § 8-124). It states, in part, that "there have existed and will continue to exist in the future in municipalities . . . substandard, insanitary, deteriorated, slum or blighted areas which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the state; that . . . the existence of such areas constitutes an economic and social liability [and] substantially impairs or arrests the sound growth of municipalities . . .; [and] that this menace . . . cannot be dealt with effectively by . . . private enterprise without the aids" provided in the statute. The act defines a redevelopment area as "an area within the state which is deteriorated, substandard or detrimental to the safety, health, morals or welfare of the community. An area may consist partly or wholly of vacant or unimproved land or of land with structures and improvements thereon, and may include structures not in themselves substandard or insanitary which are found to be essential to complete an adequate unit of development, [if] the redevelopment area is deteriorated, substandard or detrimental." Cum. Sup. 1955, § 484d (b) (as amended, General Statutes § 8-125[b]. While it cannot control the decision of this case, it is interesting to note, as we consider the legislative intent expressed in the act, that in 1959 the General Assembly amended both of the quoted sections by inserting the word "deteriorating" after the word "deteriorated" wherever it appeared. Public Acts 1959, No. 397, §§ 1, 2. This is an indication of an intent that the sections are to be liberally construed within the broad language they contain.

We have held the Redevelopment Act constitutional. *Gohld Realty Co.* v. *Hartford*, 141 Conn. 135, 147, 104 A.2d 365; see *Bahr Corporation* v. *O'Brion*, 146 Conn. 237, 247, 149 A.2d 691; note 44 A.L.R.2d 1414, 1420, & A.L.R.2d Sup. Serv. The question is whether the agency purporting to act under the declaration of policy and definition stated in the act abused or exceeded its powers. The determination of what

constitutes a redevelopment area and what property is to be taken is primarily a matter for the redevelopment agency, and its decision is open to judicial review only to discover whether it has acted unreasonably or in bad faith or has exceeded its powers. *Gohld Realty Co.* v. *Hartford*, supra, 146; *State* v. *Fahey*, 147 Conn. 13, 17, 156 A.2d 463; *Velishka* v. *Nashua*, 99 N.H. 161, 165, 106 A.2d 571, 44 A.L.R.2d 1406 & note, 1414, 1437. The inclusion within the area of certain properties which are not substandard does not constitute unreasonable or arbitrary action, because it is the condition obtaining as to the entire area and not as to individual properties which is determinative. The statute specifically so states, and the area concept is borne out by the cases. Cum. Sup. 1955, § 484d (b) (as amended, § 8-125[b]); *Gohld Realty Co.* v. *Hartford*, supra, 147; *Berman* v. *Parker*, 348 U.S. 26, 34, 75 S. Ct. 98, 99 L. Ed. 27; *Babcock* v. *Community Redevelopment Agency*, 148 Cal. App. 2d 38, 48, 306 P.2d 513; *Wilson* v. *Long Branch*, 27 N.J. 360, 379, 142 A.2d 837; note, 44 A.L.R.2d 1414, 1439. The conditions in the definition of a redevelopment area are stated disjunctively. The agency could establish a redevelopment area if one or more of the conditions existed. *Oliver* v. *Clairton*, 374 Pa. 333, 340, 98 A.2d 47.

The decision of the redevelopment agency, concurred in by the city council and sustained by the trial court, that the area was "deteriorated" and to that extent "detrimental to the safety, health, morals or welfare of the community" was not arbitrary or unreasonable or in abuse of its powers. The neighborhood is adjacent to what can be called the downtown shopping district of Torrington. It is crossed by two of the city's main thoroughfares. It borders one of the city's oldest parks. It contains a city library. While not a slum, it nevertheless has a large proportion of substandard wooden structures located on small lots and bordering on a complexity of poorly arranged streets. In these days of advanced city planning and urban improvement, the city authorities could properly conclude that there was a probability of greater benefit

to the whole community if the land in the area could be put to better use. "Where it appears that an honest judgment has been reasonably and fairly exercised after a full hearing, courts should be cautious about disturbing the decision of the local authority." *Kutcher* v. *Town Planning Commission*, 138 Conn. 705, 710, 88 A.2d 538; *Eden* v. *Town Plan & Zoning Commission*, 139 Conn. 59, 62, 89 A.2d 746; *Couch* v. *Zoning Commission*, 141 Conn. 349, 359, 106 A.2d 173; *Levinsky* v. *Zoning Commission*, 144 Conn. 117, 126, 127 A.2d 822.

The plaintiff claims that he was denied due process of law in that the hearing afforded him no opportunity to know and to meet, by rebuttal, cross-examination and argument, the evidence unfavorable to him. A public hearing was held after due notice, as the statute required. Cum. Sup. 1955, § 485d; Public Acts 1957, No. 13, § 53 (General Statutes § 8-127). No claim is made to the contrary. The trial court found, and its finding is not challenged, that the plaintiff's representative appeared, spoke in opposition to the proposal and was heard without interruption, and that he did not seek to offer any evidence or to examine or cross-examine any witnesses. The due process clause of the fourteenth amendment to the federal constitution, which has substantially the same meaning as article first, § 12, of our state constitution, does not guarantee any particular form of state procedure. Due regard must be had to the nature of the proceeding and the individual rights affected by it. *Proctor* v. *Sachner*, 143 Conn. 9, 17, 118 A.2d 621; *John J. McCarthy Co.* v. *Alsop*, 122 Conn. 288, 296, 189 A. 464; 2 Cooley, Constitutional Limitations (8th Ed.) p. 741. The proceeding in the instant case was to determine the need for the acquisition of private property for a public purpose, and the extent of the acquisition. It required a legislative determination of fact and, thereafter, a determination of the amount of the damages to be paid for the taking. The plaintiff was afforded a full opportunity to appear and oppose, and to offer any evidence he had. For all that appears, he could have examined or cross-examined

witnesses or questioned a member or employee of the agency, but he did not. He had a fair hearing on the issue of the taking. *Gohld Realty Co.* v. *Hartford*, 141 Conn. 135, 141, 104 A.2d 365. The act gives him a right of appeal from the agency to the courts on the issue of compensation. Cum. Sup. 1955, § 490d (General Statutes § 8-132). There is no merit to his claim of denial of due process.

The plaintiff claims error in the denial of his motions for disclosure and the production of a variety of documents relating to standards used by the agency in determining whether dwellings in the area were substandard. Practice Book §§ 70, 73; General Statutes § 52-197. A ruling on such a motion is within the sound discretion of the court. *Kiessling* v. *Kiessling*, 134 Conn. 564, 568, 59 A.2d 532. That discretion was not abused in the instant case. The litigation deals with the doings of a public administrative agency whose papers were open to the inspection of all. The agency disclosed what dwellings had been declared substandard, although it did not appear what the four standards were which, according to its finding, were used in the determination. The court reviews the action of an administrative agency largely on its record, which, in the instant case, was filed with the agency's pleadings. *Hoffman* v. *Kelly*, 138 Conn. 614, 618, 88 A.2d 382; *Beach* v. *Planning & Zoning Commission*, 141 Conn. 79, 80, 103 A.2d 814; *Conley* v. *Board of Education*, 143 Conn. 488, 492, 123 A.2d 747. The record included reports, proposed plans, the findings of the agency, the final approved plan and a stenographic transcript of the public hearing. This record was supplemented by the examination of witnesses at the trial. A trial tests the court's ruling on a motion for disclosure, for it then appears whether the mover was hampered, in the preparation and presentation of his case, by the denial of his motion. See *Pottetti* v. *Clifford*, 146 Conn. 252, 258, 150 A.2d 207. We cannot see that the action of the court here prevented the plaintiff from fully trying his case, and we conclude that there was no error in the court's ruling.

Two rulings on evidence alleged as error require only brief

discussion. The defendants called as a witness a city planner who had prepared a report concerning the conditions he found in the area in question. The witness testified that this report, together with his so-called survey forms, was turned over to the agency for use by it in reaching its conclusions. In rebuttal, the plaintiff called the secretary of the agency, who testified that he had attended all the executive sessions of the agency at which the data before the agency was discussed in preparation for a final decision. He was then asked whether the agency had examined the survey forms, but the defendants' objection to the question on the ground of irrelevancy was sustained. The trial court has a wide discretion in its rulings on the relevancy of evidence. *Stoiber* v. *Bridgeport*, 145 Conn. 363, 366, 143 A.2d 434; *Morico* v. *Cox*, 134 Conn. 218, 224, 56 A.2d 522; Berman, Conn. Evidence, p. 117. The issue was not whether the report of the city planner was borne out by his work sheets, but whether the agency had abused its discretion. If the agency's conclusions on the basis of the information before it was sound, the question whether its members had personally examined the survey forms accompanying the report of the city planner was inconsequential. The court did not abuse its discretion in sustaining the objection to the question.

The court allowed the building superintendent of the city to testify that the buildings in the area did not qualify under the fire district regulations, although the plaintiff objected to the qualifications of the witness. The qualification of an expert witness is largely within the court's discretion, and if any reasonable qualification can be established, the objection goes to the weight of the evidence rather than to its admissibility. *Wray* v. *Fairfield Amusement Co.*, 126 Conn. 221, 224, 10 A.2d 600; *Sibley* v. *Middlefield*, 143 Conn. 100, 108, 120 A.2d 77; *Sears* v. *Curtis*, 147 Conn. (21 Conn. L.J., No. 14, p. 9). There was no error in the ruling.

There is no error.

In this opinion the other judges concurred.

APPENDIX B

PERTINENT SECTIONS OF CONNECTICUT REDEVELOPMENT LEGISLATION

CONN. GEN. STAT. (Rev. 1949) (Supp. 1955)

Sec. 484d. DEFINITIONS . . . (b) "redevelopment area" shall mean an area within the state which is deteriorated, substandard or detrimental to the safety, health, morals or welfare of the community. An area may consist partly or wholly of vacant or unimproved land or of land with structures and improvements thereon, and may include structures not in themselves substandard or insanitary which are found to be essential to complete an adequate unit of development, provided that the redevelopment area is deteriorated, substandard or detrimental.

CONN. GEN. STAT. (Rev. 1958)

Sec. 8-127. INITIATION AND APPROVAL OF REDEVELOPMENT PLAN. . . . . Before approving any redevelopment plan, the redevelopment agency shall hold a public hearing thereon, notice of which shall be published at least twice in a newspaper of general circulation in the municipality, the first publication of notice to be not less than two weeks before the date set for the hearing. The redevelopment agency may approve any such redevelopment plan if, following such hearing, it finds that: (a) The area in which the proposed redevelopment is to be located is a redevelopment area; (b) the carrying out of the redevelopment plan will result in materially improving conditions in such area; (c) sufficient living accommodations are available within a reasonable distance of such area or are provided

for in the redevelopment plan for families displaced by the proposed improvement, at prices or rentals within the financial reach of such families; and (d) the redevelopment plan is satisfactory as to site planning, relation to the comprehensive or general plan of the municipality and, except when the redevelopment agency has prepared the redevelopment plan, the construction and financial ability of the redeveloper to carry it out.

IN THE

Supreme Court of the United States

OCTOBER TERM 1969

No. 293

FRED J. GRAHAM,

Petitioner,

V.

JAMES P. HOULIHAN, SALVATORE RUBINO, ERNEST BOOTH, JR., DONALD CASSIN, AND JAMES MCKENNA, THE REDEVELOPMENT AGENCY, AND THE CITY OF TORRINGTON,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	1
COUNTER-STATEMENT OF FACTS	1
ARGUMENT	3
POINT I — The Petitioner was afforded a full opportunity to appear at the Public Hearing and to offer any evidence he had in opposition to the Redevelopment Plan	3
POINT II — The Public Hearing was properly held for the purpose of making a legislative determination of fact and Petitioner was not denied due process of law by the manner or nature of such hearing	4
CONCLUSION	8

Cases Cited

Backus v. Fort Street Union Depot Co., 169 U. S. 557 (1898)	7
Bauman v. Ross, 167 U. S. 548 (1897)	5
Berman v. Parker, 348 U. S. 26, 99 L. ed. 27 (1954)	7, 8
Bi-Metallic Inv. Co. v. State Board of Equalization, 239 U. S. 441 (1915)	6
Bragg v. Weaver, 251 U. S. 57 (1919)	7
Danforth v. United States, 308 U. S. 271, 84 L. ed. 240 (1939)	5
Gohld Realty Co. v. Hartford, 141 Conn. 135 (1954)	7
Interstate Commerce Comm. v. Louisville & N. R. Co., 227 U. S. 88 (1913)	6

PAGE

Morgan v. United States, 304 U. S. 1, 82 L. ed. 1129 (1938) 6

Morgan v. United States, 298 U. S. 468, 80 L. ed. 1288 (1913) 6

Norwegian Nitrogen Prod. Co. v. United States, 288 U. S. 294, 77 L. ed. 796 (1933) 5

Ohio Bell Tel. Co. v. Comm., 301 U. S. 292, 81 L. ed. 1093 (1937) 6

United States v. Carmack, 329 U. S. 230, 91 L. ed. 209 (1946) 6

Water Commissioners v. Johnson, 86 Conn. 151 (1912) 6

Wilson v. City of Long Branch, 27 N. J. 360 (1958); cert. denied 358 U. S. 873, 3 L. ed. 2d 104 (1959) 7

Zurn v. City of Chicago, 389 Ill. 114, 59 N. E. 2d 18 (1945) 5

Statutes Cited

Conn. Gen. Stat., 1958 Rev., Sec. 8-127 4

Conn. Gen. Stat. 1949 Rev., 1955 Supp. Sec. 490d (Now Conn. Gen. Stat. 1958 Rev., Sec. 8-132) 7

Public Law 171, 81st Cong., 63 Stat. 413, 414 (1949), Section 105 (d); 42 U.S.C.A. § 1455 (d) 5

Public Law 1020, 84th Cong., 70 Stat. 1091, 1101; 42 U.S.C.A. § 1462 (1956) 5

Text Cited

Cooley, Constitutional Limitations (8th Ed.) p. 741 5

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

QUESTION PRESENTED

Whether due process of law was denied the Petitioner by the nature of and the manner in which the Redevelopment Agency conducted the Public Hearing?

COUNTER-STATEMENT OF FACTS

The Respondents adopt the Petitioner's Statement of Facts except for the following corrections and additions.

The standards referred to in "Questions Presented" on Page 2 of the Petition, had to do with determining whether or not buildings in the area were substandard or deteriorated. (Find., Par. 31, R. p. 42), and were not the basis for the Agency's conclusion that the

area was a redevelopment area. Such finding was based on the personal knowledge of the Agency members, on information they gathered from outside sources, on personal inspection of the area, and after due deliberation. (Find., Par. 22, R. p. 41; Par. 29, R. p. 42; Par. 46, R. p. 44 and Pars. 71, 72, R. p. 46).

The Agency's consultants submitted a preliminary project report in May of 1956 which the Agency caused to be published in serial form in local newspapers (Find., Par. 16, R. p. 40). This report was made available to the public and numerous public meetings were held in connection therewith. (Find., Par. 17, R. p. 40). This was after the disastrous flood of August 19, 1955, a factor in selecting the particular site in question. (Find., Par. 21, R. p. 41). The Agency approved the preliminary project report on October 16, 1956. (Find., Par. 23, R. p. 41 and 42). The final project report was published in May of 1957 and was on file for public examination from May until October of 1957, during which time an extensive information program was conducted to publicize the plan and after which, on October 7, 1957, the voters of the city approved the expenditure of public funds for the plan by a vote of more than 2 to 1. (Find., Par. 24, R. p. 42). A public hearing on the final project report was held on October 10, 1957. (Find., Par. 25, R. p. 42). Persons, including representatives of the plaintiff Graham, (Petitioner herein), appeared and spoke in opposition to the plan, while other persons appeared and spoke in favor of it. (Find., Par. 26, R. p. 42). The plaintiff Graham's representative was heard without interruption, was accorded a second opportunity to speak, and did not seek to offer evidence or to examine or cross-examine witnesses. (Find., Par. 27, R. p. 42). The hearing was

held open for the reception by the Agency of any further pertinent information until October 15, 1957, and during this period the plaintiff did not offer nor seek to offer anything further. (Find., Par. 28, R. p. 42). Following the hearing the Agency met several times in executive session considering the pros and cons of the plan and on October 28, 1957, unanimously concluded that the area was a redevelopment area and adopted the plan of redevelopment. (Find., Par. 29, R. p. 42).

ARGUMENT

POINT I

The Petitioner was afforded a full opportunity to appear at the Public Hearing and to offer any evidence he had in opposition to the Redevelopment Plan.

Petitioner's claim is that he was denied due process because there was no presentation at the public hearing to which he could respond. This charge is unfounded in fact and in law. At the many hearings open to the public held by the Agency, at the Public Hearing with which we are herein concerned, and throughout the history of the redevelopment project, the Agency presented to the public facts, figures and evidence pertaining to the proposed redevelopment project.

The trial court found, and its finding was not challenged, that the plaintiff's representative appeared at the Public Hearing in question, spoke in opposition to the proposal and was heard without interruption; that he did not seek to offer any evidence or to examine or cross-examine any witnesses; and that the Petitioner did not avail himself of an opportunity to offer evidence thereafter, during a period when the hearing was held open to receive any further pertinent information. (Find., Pars. 27 and 28, R. p. 42).

It is clear that Petitioner had ample knowledge on which to base argument or evidence, if he had any, in opposition to the redevelopment plan. In fact, the Petitioner did not present any such evidence.

In addition the Petitioner instituted a civil suit against the Agency to determine the validity of the redevelopment project. This action was brought by a writ dated February 5, 1958. On April 14 and 15 of 1959, a trial was held. The trial court, on June 2, 1959, issued its judgment file finding all the issues for the defendants. (R. p. 26-28). Although obviously plaintiff had ample time to prepare his case thoroughly, he failed to produce any substantial evidence on the trial to show that the actions of the Agency in making its determination were unreasonable or in bad faith or in abuse of the power conferred upon it by Statute.

The trial judge summarily dismissed plaintiff's contention that the Public Hearing was unconstitutional. (R. p. 25).

POINT II

The Public Hearing was properly held for the purpose of making a legislative determination of fact and Petitioner was not denied due process of law by the manner or nature of such hearing.

Conn. Gen. Stat. Sec. 8-127 requires the holding of a public hearing on published public notice before any redevelopment plan is approved by a redevelopment agency.

The due process clause of the Fourteenth Amendment to the Federal Constitution does not guaranty any particular form of State procedure in regard to public hearings. The type of public hearing to be held

varies with the nature of the proceeding and the individual rights to be affected by it. *Cooley, Constitutional Limitations (8th Ed.) p. 741.*

Indeed it appears likely that Statutes of a State could provide for redevelopment without requiring a public hearing at all and still not be violative of the due process clause. While one of the fundamental requirements of Federal Redevelopment Law, compliance with which is necessary before a loan or grant of federal funds will be made, is that no land can be acquired except after a public hearing, *(Public Law 171, 81st Cong., 63 Stat. 413, 414 (1949), Section 105 (d); 42 U. S. C. A. § 1455 (d)*, even this requirement is abrogated in a "disaster area." *Public Law 1020, 84th Cong., 70 Stat. 1091, 1101; 42 U. S. C. A. § 1462 (1956).*

At the stage of redevelopment planning at which this public hearing was held, there had been no taking of anyone's property. A mere declaration of a desire to condemn a certain area is not a taking of property. *Danforth v. United States, 308 U. S. 271, 84 L. ed. 240 (1939); Bauman v. Ross, 167 U. S. 548 (1897).* Hence, no question of due process is involved herein. *Zurn v. City of Chicago, 389 Ill. 114, 59 N. E. 2d 18 (1945).*

The legislative intent in requiring this public hearing was to provide information to assist the Agency in making the four findings required by the statute. The situation is analogous to that of the Legislature itself holding public hearings on bills before it; or to the hearing on taking private property by eminent domain for highway purposes. *Norwegian Nitrogen Prod. Co. v.*

United States, 288 U. S. 294, 77 L. ed. 796 (1933). They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the Fourteenth Amendment, as long as one is granted on the issue of just compensation. *United States v. Carmack, 329 U. S. 230, 91 L. ed. 209 (1946); Water Commissioners v. Johnson, 86 Conn. 151 (1912).*

The Petitioner urges upon the court that the public hearing herein does not meet the minimum requirements assured to every citizen by the Fourteenth Amendment, citing in support of this proposition the cases of *Ohio Bell Tel. Co. v. Comm., 301 U. S. 292, 81 L. ed. 1093 (1937); Morgan v. United States, 304 U. S. 1, 82 L. ed. 1129 (1938); Morgan v. United States, 298 U. S. 468, 80 L. ed. 1288 (1936); Interstate Commerce Comm. v. Louisville & N. R. Co., 227 U. S. 88 (1913).* But these cases are rate making, not condemnation, cases. They require a different type of public hearing. It is not necessary or desirable that the redevelopment public hearing be of the adversary type. Rather it must be a forum for the reception of positive evidence. The burden of coming forward with evidence in support or in opposition must, perforce, rest in the hands of those who wish to either support or oppose. Any other plan would result in administrative chaos, making it impossible for a redevelopment agency to propose or establish any redevelopment plan, anywhere. *Bi-Metallic Inv. Co. v. State Board of Equalization, 239 U. S. 441 (1915).*

In the instant situation it has been established beyond a doubt that redevelopment laws are constitutional and that redevelopment is for a public purpose. *Gohld Realty Co. v. Hartford, 141 Conn. 135 (1954); Berman v. Parker, 348 U. S. 26, 99 L. ed. 27 (1954).* The question to be resolved at the public hearing is to determine whether private property should be taken for a public purpose, i.e., redevelopment, and the extent of that acquisition. Such a question requires a legislative determination of fact and, thereafter, a determination of the amount of damages to be paid to the property owner for the taking. The due process requirement of the Constitution is fully satisfied if the property owner is given a full hearing on the question of compensation. *Bragg v. Weaver, 251 U. S. 57 (1919); Backus v. Fort Street Union Depot Co., 169 U. S. 557 (1898).* The Connecticut redevelopment statutes give a property owner a right of appeal from the agency's decision to the courts on that issue. *Connecticut General Statutes 1949 Rev., 1955 Supp., Sec. 490d (Now Connecticut General Statutes 1958 Rev., Sec. 8-132).*

In a similar situation, the New Jersey court questioned whether due process required a public hearing at all. The court held that the legislative character of the proceedings did not require an adversary type hearing. *Wilson v. City of Long Branch, 27 N. J. 360 (1958); cert. denied, 358 U. S. 873, 3 L. ed. 2d 104 (1959).*

The plaintiff was accorded a "fair hearing" as required by law; *Gohld Realty Co. v. Hartford, 141*

Conn. 135 (1954). "The rights of these property owners are satisfied when they receive that just compensation which the Fifth Amendment exacts as the price of the taking." *Berman v. Parker, 348 U. S. 26, 36, 99 L. ed. 27, 39.*

For these reasons the Respondents herein believe the instant Petition raises no substantial federal question.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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